

DANIEL E. LUNGREN, Attorney General  
of the State of California  
DAVID LEW  
Deputy Attorney General  
50 Fremont Street, Suite 300  
San Francisco, California 94105-2239  
Telephone: (415) 356-6367

Attorneys for Complainant

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	Case No. 03-93-28792
Against:	)	
	)	OAH No. N9505007
BYRON MING CHONG, M.D.	)	
535 East Romie Lane	)	STIPULATED SETTLEMENT
Salinas, California 93901	)	AND
	)	DISCIPLINARY ORDER
Physician's and Surgeon's	)	
Certificate No. A23615,	)	
	)	
Respondent.	)	

IT IS HEREBY STIPULATED AND AGREED by and between the  
parties to the above-entitled proceedings that the following  
matters are true:

1. An Accusation in case number 03-93-28792 was filed  
with the Division of Medical Quality, of the Medical Board of  
California, Department of Consumer Affairs (the "Division") on  
February 15, 1995, and is currently pending against BYRON MING  
CHONG, M.D. (the "respondent").

2. The Accusation, together with all statutorily  
required documents, was duly served on the respondent on or about  
February 22, 1995, and respondent filed his Notice of Defense

1 contesting the Accusation on or about March 2, 1995. A copy of  
2 Accusation No. 03-93-28792 is attached as Exhibit "A" and hereby  
3 incorporated by reference as if fully set forth.

4 3. The Complainant, Dixon Arnett, was the Executive  
5 Director of the Medical Board of California at the time of the  
6 filing of the Accusation and brought this action solely in his  
7 official capacity. The Complainant is represented by the  
8 Attorney General of California, Daniel E. Lungren, by and through  
9 Deputy Attorney General David Lew.

10 4. The respondent is represented in this matter by  
11 Robert J. Sullivan, Esq., whose address is Nossaman, Guthner,  
12 Knox & Elliott, LLP, 915 L Street, Suite 1000, Sacramento,  
13 California 95814-3701.

14 5. The respondent and his attorney have fully  
15 discussed the charges contained in Accusation No. 03-93-28792,  
16 and the respondent has been fully advised regarding his legal  
17 rights and the effects of this stipulation.

18 6. At all times relevant herein, respondent has been  
19 licensed by the Medical Board of California under Certificate No.  
20 A23615.

21 7. Respondent understands the nature of the charges  
22 alleged in the Accusation and that, if proven at hearing, the  
23 charges and allegations would constitute cause for imposing  
24 discipline upon his certificate. Respondent is fully aware of  
25 his right to a hearing on the charges contained in the  
26 Accusation, his right to confront and cross-examine witnesses  
27 against him, his right to the use of subpoenas to compel the

1 attendance of witnesses and the production of documents in both  
2 defense and mitigation of the charges, his right to  
3 reconsideration, appeal and any and all other rights accorded by  
4 the California Administrative Procedure Act and other applicable  
5 laws. Respondent knowingly, voluntarily and irrevocably waives  
6 and gives up each of these rights.

7           8. Respondent admits a violation of Business and  
8 Professions Code section 2236, subdivision (a) (conviction of a  
9 crime), pursuant to the First Cause for Disciplinary Action of  
10 Accusation No. 03-93-28792, and agrees that respondent has  
11 subjected his certificate to disciplinary action pursuant to  
12 Business and Professions Code section 2234. Respondent agrees to  
13 be bound by the Division's Disciplinary Order as set forth below.

14           9. The admissions made by respondent herein are for  
15 the purpose of this proceeding and any other proceedings in which  
16 the Division of Medical Quality, Medical Board of California, or  
17 other professional licensing agency is involved, and shall not be  
18 admissible in any other criminal or civil proceeding.

19           10. Based on the foregoing admissions and stipulated  
20 matters, the parties agree that the Division shall, without  
21 further notice or formal proceeding, issue and enter the  
22 following order:

23                           **DISCIPLINARY ORDER**

24           **IT IS HEREBY ORDERED** that Physician's and Surgeon's  
25 Certificate number A23615 issued to respondent is revoked.  
26 However, the revocation is stayed and respondent is placed on  
27 probation for five (5) years on the following terms and

1 conditions. Within 15 days after the effective date of this  
2 decision the respondent shall provide the Division, or its  
3 designee, proof of service that respondent has served a true copy  
4 of this decision on the Chief of Staff or the Chief Executive  
5 Officer at every hospital where privileges or membership are  
6 extended to respondent or where respondent is employed to  
7 practice medicine and on the Chief Executive Officer at every  
8 insurance carrier where malpractice insurance coverage is  
9 extended to respondent.

10           1.     PSYCHIATRIC EVALUATION     Within thirty (30) days of  
11 the effective date of this decision, and on a periodic basis  
12 thereafter as may be required by the Division or its designee,  
13 respondent shall undergo a psychiatric evaluation (and  
14 psychological testing, if deemed necessary) by a Division-  
15 appointed psychiatrist, who shall furnish an evaluation report to  
16 the Division or its designee. The respondent shall pay the cost  
17 of the psychiatric evaluation.

18           If the evaluation or the treating psychiatrist's report  
19 determines that respondent is not mentally fit to practice  
20 medicine safely, then respondent shall be suspended from the  
21 practice of medicine until a repeat evaluation establishes that  
22 he can practice safely, as evidenced by written notice to  
23 respondent from the Division or its designee.

24           2.     PSYCHOTHERAPY     Within sixty (60) days of the  
25 effective date of this decision, respondent shall submit to the  
26 Division or its designee for its prior approval the name and  
27 qualifications of a psychotherapist of respondent's choice. Upon

1 approval, respondent shall undergo and continue treatment until  
2 the Division or its designee deems that no further psychotherapy  
3 is necessary. Respondent shall have the treating psychotherapist  
4 submit quarterly status reports to the Division or its designee.  
5 The Division or its designee may require respondent to undergo  
6 psychiatric evaluations by a Division-appointed psychiatrist.  
7 The respondent shall pay the cost of the therapy and evaluations.

8           If the treating psychiatrist's report determines that  
9 respondent is not mentally fit to practice medicine safely, then  
10 respondent shall be suspended from the practice of medicine until  
11 a repeat evaluation establishes that he can practice safely, as  
12 evidenced by written notice to respondent from the Division or  
13 its designee.

14           3.     **THIRD PARTY PRESENCE - SEXUAL TRANSGRESSORS**     During  
15 probation, respondent shall have a third party present while  
16 examining or treating female patients in any medical office  
17 setting. In any hospital/surgical center setting, respondent  
18 shall have a third-party member of the hospital/surgical center  
19 staff, whose name shall be included in the patient record,  
20 present while examining or treating female patients. Respondent  
21 shall, within thirty (30) days of the effective date of the  
22 decision, submit to the Division or its designee for its approval  
23 name(s) of persons who will act as the third party present in the  
24 medical office setting. The respondent shall execute a release  
25 authorizing the third party(s) present to divulge any information  
26 that the Board may request during interviews by the probation  
27 monitor on a periodic basis:

1                   4.     COMMUNITY SERVICE - FREE SERVICES     Within sixty (60)  
2 days of the effective date of this decision, respondent shall  
3 submit to the Division or its designee for its prior approval a  
4 community service program in which respondent shall provide free  
5 medical or nonmedical services on a regular basis to a community  
6 or charitable facility or agency for at least 750 hours for the  
7 first 12 months of probation. Respondent shall receive credit  
8 for those hours of community services which he has already  
9 performed pursuant to his criminal probation in Monterey County  
10 Municipal Court Case No. MS120393A.

11                   5.     ETHICS COURSE     Within sixty (60) days of the  
12 effective date of this decision, respondent shall enroll in a  
13 course in Ethics approved in advance by the Division or its  
14 designee, and shall successfully complete the course during the  
15 first year of probation.

16                   6.     OBEY ALL LAWS     Respondent shall obey all federal,  
17 state and local laws, all rules governing the practice of  
18 medicine in California, and remain in full compliance with any  
19 court ordered criminal probation, payments and other orders.

20                   7.     QUARTERLY REPORTS     Respondent shall submit  
21 quarterly declarations under penalty of perjury on forms provided  
22 by the Division, stating whether there has been compliance with  
23 all the conditions of probation.

24                   8.     PROBATION SURVEILLANCE PROGRAM COMPLIANCE     Respondent  
25 shall comply with the Division's probation surveillance program.  
26 Respondent shall, at all times, keep the Division informed of his  
27 addresses of business and residence which shall both serve as

1 addresses of record. Changes of such addresses shall be  
2 immediately communicated in writing to the Division. Under no  
3 circumstances shall a post office box serve as an address of  
4 record.

5 Respondent shall also immediately inform the Division,  
6 in writing, of any travel to any areas outside the jurisdiction  
7 of California which lasts, or is contemplated to last, more than  
8 thirty (30) days.

9 9. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS  
10 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for  
11 interviews with the Division, its designee or its designated  
12 physician(s) upon request at various intervals and with  
13 reasonable notice.

14 10. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-STATE NON-  
15 PRACTICE In the event respondent should leave California to  
16 reside or to practice outside the State or for any reason should  
17 respondent stop practicing medicine in California, respondent  
18 shall notify the Division or its designee in writing within ten  
19 (10) days of the dates of departure and return or the dates of  
20 non-practice within California. Non-practice is defined as any  
21 period of time exceeding thirty days in which respondent is not  
22 engaging in any activities defined in Sections 2051 and 2052 of  
23 the Business and Professions Code. All time spent in an  
24 intensive training program approved by the Division or its  
25 designee shall be considered as time spent in the practice of  
26 medicine. Periods of temporary or permanent residence or  
27 practice outside California or of non-practice within California,

as defined in this condition, will not apply to the reduction of the probationary period.

11. COMPLETION OF PROBATION Upon successful completion of probation, respondent's certificate shall be fully restored.

12. VIOLATION OF PROBATION If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. COST RECOVERY The respondent is hereby ordered to reimburse the Division the amount of \$2,250 per year for the first two (2) years of probation for its investigative and prosecution costs. Failure to reimburse the Division's cost of investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to reimburse the Division for its investigative and prosecution costs.

14. PROBATION COSTS Respondent shall pay the costs associated with probation monitoring in the amount of \$1,200 per year for each and every year of probation. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor at the beginning of



1 each calendar year. Failure to pay costs within 30 days of the  
2 due date shall constitute a violation of probation.

3 15. LICENSE SURRENDER Following the effective date of  
4 this decision, if respondent ceases practicing due to retirement,  
5 health reasons or is otherwise unable to satisfy the terms and  
6 conditions of probation, respondent may voluntarily tender his  
7 certificate to the Board. The Division reserves the right to  
8 evaluate the respondent's request and to exercise its discretion  
9 whether to grant the request, or to take any other action deemed  
10 appropriate and reasonable under the circumstances. Upon formal  
11 acceptance of the tendered license, respondent will not longer be  
12 subject to the terms and conditions of probation.

#### 14 CONTINGENCY

15 This stipulation shall be subject to the approval of  
16 the Division. Respondent understands and agrees that Board staff  
17 and counsel for complainant may communicate directly with the  
18 Division regarding this stipulation and settlement, without  
19 notice to or participation by respondent or his counsel. If the  
20 Division fails to adopt this stipulation as its Order, the  
21 stipulation shall be of no force or effect, it shall be  
22 inadmissible in any legal action between the parties, and the

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1 Division shall not be disqualified from further action in this  
2 matter by virtue of its consideration of this stipulation.

3  
4 DATED: May 16, 1996

DANIEL E. LUNGREN  
Attorney General of the  
State of California

6  
7 David Lew  
8 DAVID LEW  
9 Deputy Attorney General  
Attorneys for Complainant

10 DATED: April 25, 1996  
11 Robert J. Sullivan  
12 ROBERT J. SULLIVAN, ESQ.  
Attorney for Respondent

13 ACCEPTANCE

14 I have read the above Stipulated Settlement and  
15 Disciplinary Order. I have fully discussed the terms and  
16 conditions and other matters contained therein with my attorney,  
17 Robert J. Sullivan, Esq. I understand the effect this Stipulated  
18 Settlement and Disciplinary Order will have upon my certificate,  
19 and agree to be bound thereby. I enter this stipulation freely,  
20 knowingly, intelligently and voluntarily.

21 DATED: May 3 1996

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23 BYRON MING CHONG, M.D.  
24 Respondent  
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DECISION AND ORDER  
OF THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA

The foregoing Stipulation and Order, in case number 03-93-28792, is hereby adopted as the Order of the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs. An effective date of July 15,, 1996, has been assigned to this Decision and Order.

Made this 14th day of June, 1996.



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FOR THE DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA

Exhibits: Accusation

1 DANIEL E. LUNGREN, Attorney General  
2 of the State of California  
3 DAVID LEW  
4 Deputy Attorney General  
5 455 Golden Gate Avenue, Room 6200  
6 San Francisco, California 94102-3658  
7 Telephone: (415) 703-2248

8 Attorneys for Complainant

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BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
STATE OF CALIFORNIA

10 In the Matter of the Accusation ) No. 03-93-28792  
11 Against: )  
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BYRON MING CHONG, M.D. )  
535 East Romie Lane )  
Salinas, California 93901 )  
Physician and Surgeon )  
Certificate No. A23615 )  
Respondent. )

17 DIXON ARNETT, complainant herein, charges and alleges  
18 as follows:

19 1. Complainant is the Executive Director of the  
20 Medical Board of the State of California (hereinafter, "Board")  
21 and makes these charges and allegations solely in his official  
22 capacity.

23 2. On or about January 14, 1970, the Board issued to  
24 respondent, Byron Ming Chong (hereinafter, "respondent"),  
25 Physician and Surgeon Certificate number A23615. The certificate  
26 is current and has an expiration date of August 31, 1995. No  
27 Board record exists of any prior disciplinary action having been

1 taken against respondent by the State of California. Respondent  
2 is not a supervisor of a physician assistant.

3 MEDICAL BOARD AUTHORITY

4 3. Section 2001 of the Business and Professions Code<sup>1/</sup>  
5 provides for the existence of the Board.

6 4. Section 2003 provides for the existence of the  
7 Division of Medical Quality (hereinafter, "Division") within the  
8 Board.

9 5. Section 2004 provides, in pertinent part, that the  
10 Division is responsible for the administration and hearing of  
11 disciplinary actions involving enforcement of the Medical  
12 Practice Act (§ 2000 et seq.) and the carrying out of  
13 disciplinary action appropriate to findings made by a medical  
14 quality review committee, the Division, or an administrative law  
15 judge.

16 6. Section 2220 provides, in pertinent part, that  
17 except as otherwise provided by law, the Division may take action  
18 against all persons guilty of violating the provisions of the  
19 Medical Practice Act (§ 2000 et seq.). The Division shall  
20 enforce and administer the Medical Practice Act as to physician  
21 and surgeon certificate holders, and its powers include, but are  
22 not limited to, investigating complaints from the public, from  
23 other licensees, or from health care facilities, that a physician  
24 and surgeon may be guilty of unprofessional conduct.

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26  
27 1. All references are to the Business and Professions  
Code unless otherwise specified.

1           7. Section 2227 provides, in part, that the Board  
2 shall take disciplinary action against a licensee charged with  
3 and found guilty of unprofessional conduct.

4           8. Section 726 provides, in pertinent part, that the  
5 commission of any act of sexual abuse, misconduct, or relations  
6 with a patient constitutes unprofessional conduct.

7           9. Section 2234 provides, in relevant part, as  
8 follows:

9           "The Division of Medical Quality shall take action  
10 against any licensee who is charged with unprofessional  
11 conduct. In addition to other provisions of this  
article, unprofessional conduct includes, but is not  
limited to the following:

12           (a) Violating or attempting to violate,  
13 directly, or assisting in or abetting the  
violation of, or conspiring to violate, any  
14 provision of this chapter.

15           (b) Gross negligence.

16           (c) Repeated negligent acts.

17           (d) Incompetence."

18           10. Section 2236 provides, in relevant part, as  
19 follows:

20           "(a) The conviction of any offense substantially  
21 related to the qualifications, functions, or duties of  
a physician and surgeon constitutes unprofessional  
22 conduct within the meaning of this chapter. The record  
of conviction shall be conclusive evidence only of the  
23 fact that the conviction occurred.

24           "(b) The division may inquire into the  
circumstances surrounding the commission of the crime  
25 in order to fix the degree of discipline or to  
determine if such conviction is of an offense  
26 substantially related to the qualifications, functions,  
or duties of a physician and surgeon. A plea or  
27 verdict of guilty or a conviction following a plea of  
nolo contendere made to a charge substantially related  
to the qualifications, functions, or duties of a

1 physician and surgeon is deemed to be a conviction  
2 within the meaning of this section."

3 OTHER STATUTORY AUTHORITY

4 11. Section 314 of the Penal Code provides, in  
5 relevant part, that any person who willfully and lewdly exposes  
6 his person, or the private parts thereof, in any public place, or  
7 in any place where there are present other persons to be offended  
8 or annoyed thereby, is guilty of a misdemeanor.

9 12. Section 236 of the Penal Code provides that any  
10 person who unlawfully violates the personal liberty of another is  
11 guilty of false imprisonment.

12 FIRST CAUSE FOR DISCIPLINARY ACTION

13 13. At all times mentioned hereafter, respondent was  
14 practicing medicine as an ophthalmologist in Salinas, California.

15 14. By a criminal complaint filed on June 30, 1993,  
16 and amended on January 28, 1994, in the Monterey County Municipal  
17 Court, Salinas Judicial District, the Monterey County District  
18 Attorney charged respondent (Case No. MS120393A) with one count  
19 of indecent exposure (Pen. Code, § 314.1) and one count of false  
20 imprisonment (Pen. Code, § 236).

21 15. The criminal charges specified in paragraph 14  
22 stem from the complaint of patient E.B., who appeared at  
23 respondent's medical office on or about June 19, 1993. Patient  
24 E.B. was scheduled to undergo a minor operation to unblock a tear  
25 duct in her right eye. Because her appointment was on Saturday,  
26 no one other than respondent was at the office when she arrived.  
27 Respondent was dressed in shorts and a tank top.

1           Respondent directed patient E.B. to a reclining chair  
2 in his examination room and applied an anesthetic to her right  
3 eye, which began to bleed. Respondent told her to cover her left  
4 eye with her hand so that she could not see what he was going to  
5 do. E.B. noticed that respondent's hands were shaking.

6           As patient E.B. lay reclined with her eyes closed in  
7 respondent's examination chair, she could hear that respondent  
8 had moved behind her and she felt the chair move. She noticed  
9 that respondent was breathing heavily. E.B. felt something was  
10 wrong and, a few minutes later, opened her unaffected eye. She  
11 observed respondent with his shorts down around his ankles.  
12 Respondent was not wearing underwear. Respondent's penis was  
13 erect and he was masturbating with his right hand. Respondent  
14 appeared to be excited.

15           Patient E.B. screamed and, holding a Kleenex to her  
16 bleeding eye, ran out of the examination room. Respondent ran  
17 after her with his shorts still down around his ankles. E.B. ran  
18 out of the office building and asked for help from a woman and  
19 her son on the street. The woman swore at respondent in Spanish  
20 but persuaded E.B. to have respondent complete the medical  
21 procedure upon her bleeding eye. The woman accompanied E.B. back  
22 to respondent's office. The woman stood by while respondent  
23 completed the medical procedure and covered the patient's eye  
24 with a patch. The woman and her son later drove E.B. to the bus  
25 depot.

26           Patient E.B. notified the Salinas police and filed a  
27 report. At the request of the Salinas police, patient E.B.



1 returned to respondent's office on or about June 22, 1993. E.B.  
2 had been fitted with a device by the police so that her  
3 conversation with respondent could be monitored. Respondent  
4 admitted to E.B. during their conversation that he had taken down  
5 his pants and had masturbated in front of her. Respondent  
6 repeatedly said that he was very sad and has had a sickness for  
7 many years which caused him to do this. Respondent told her that  
8 he could not control his illness.

9 16. On January 28, 1994, respondent pleaded nolo  
10 contendere in Case No. MS120393A to one count of false  
11 imprisonment. The charge of indecent exposure was dismissed upon  
12 motion of the district attorney.

13 17. On April 22, 1994, respondent was placed on formal  
14 probation for a period of three (3) years. As conditions of  
15 probation, respondent was ordered, inter alia, to have no contact  
16 with patient E.B., to pay a restitution fine, to undertake  
17 efforts to insure the safety of patients at his office, to  
18 undergo counseling and mental examinations, and to perform  
19 community service.

20 18. Respondent's conviction is final and constitutes a  
21 violation of section 2234, subdivision (a) (unprofessional  
22 conduct), and section 2236, subdivision (a) (conviction of a  
23 crime), thereby subjecting his Physician and Surgeon Certificate  
24 No. A23615 to discipline.

25 SECOND CAUSE OF DISCIPLINARY ACTION

26 19. The allegations contained in the First Cause of  
27 Disciplinary Action are incorporated by reference herein.

1           20. Respondent's actions, as outlined in paragraph 15,  
2 constitute unprofessional conduct within the meaning of section  
3 2234, subdivision (a) (unprofessional conduct) and section 726  
4 (sexual misconduct with patient), in that respondent committed an  
5 act of sexual misconduct with a patient. As a result,  
6 respondent's Physician and Surgeon Certificate No. A23615 is  
7 subject to discipline.

8                           COST RECOVERY

9           21. Section 125.3 provides in pertinent part that:

10           "(a) Except as provided by law, in any order issued in  
11 resolution of a disciplinary proceeding before any board  
12 within the department ... the board may request the  
13 administrative law judge to direct a licentiate found to  
14 have committed a violation or violations of the licensing  
15 act to pay a sum not to exceed the reasonable costs of the  
16 investigation and enforcement of the case."

17           "....."

18           "(c) A certified copy of the actual costs, or a good  
19 faith estimate of costs where actual costs are not  
20 available, signed by the entity bringing the proceeding or  
21 its designated representative shall be prima facie evidence  
22 of reasonable costs of investigation and prosecution of the  
23 case. The costs shall include the amount of investigative  
24 and enforcement costs up to the date of the hearing,  
25 including, but not limited to, charges imposed by the  
26 Attorney General.

27           "(d) The administrative law judge shall make a proposed  
finding of the amount of reasonable costs of investigation  
and prosecution of the case when requested pursuant to  
subdivision (a). The finding of the administrative law  
judge with regard to costs shall not be reviewable by the  
board to increase the cost award. The board may reduce or  
eliminate the cost award, or remand to the administrative  
law judge where the proposed decision fails to make a  
finding on costs requested pursuant to subdivision (a)...."

28                           PRAYER

29           WHEREFORE, complainant prays that the Board hold a  
30 hearing on the matters alleged herein, and following said

1 hearing, issue a decision:

2 1. Suspending or revoking Physician and Surgeon  
3 Certificate No. A23615 issued to Byron Ming Chong, M.D.;

4 2. Ordering the recovery for the Board of its  
5 investigative and prosecutorial costs associated with this case  
6 according to proof; and

7 3. Taking such other and further action as the Board  
8 deems necessary and proper.

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10 DATED: FEBRUARY 15, 1995.

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DIXON ARNETT  
Executive Director  
Medical Board of California  
  
Complainant